

(1997) 01 BOM CK 0063
In the Bombay High Court
Case No : Criminal W. P. No. 589 of 1996

Nana Chormale

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A
Penal Code, 1860 (IPC) — Section 302

Citation : (1997) 01 BOM CK 0063

Hon'ble Judges : V.K. Barde, J;A.D. Mane, J

Bench : Division Bench

Advocate : R.N. Dhorde and Dighe, for the Appellant; K.B. Choudhary, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Mane, J.—This writ petition is filed by the prisoner No. C-7071 Nana Bhau Chormale who is confined in the District Open Prison, Yerwada, Pune, for premature release under "fourteen years" rule applicable to the prisoners undergoing life imprisonment as laid down under the Government Letter No. RLP/1092/13/352/PRS-13 dated 11th May, 1992.

2. It is submitted by the petitioner that he was tried for offence u/s 302 of the Indian Penal Code for multiple murders in Sessions Case No. 94/1981. He was convicted by the judgment and order dated 20-3-1982 passed by the Additional Sessions Judge, Ahmednagar and sentenced to death. The petitioner filed appeal in the High Court but the appeal was dismissed. Then the petitioner filed SLP before the Supreme Court but it was dismissed. The petitioner, however, filed mercy petition before the President of India. The mercy petition was granted on 6-7-1988 and the death sentence was commuted to life imprisonment. Thus, the petitioner has been undergoing sentence of life imprisonment.

3. The petitioner further submits that he was serving in Army and was awarded

five medals for excellent job done by him during the wars of 1965 and 1971 against Pakistan. It is also submitted that the incident for which he was convicted had occurred in peculiar circumstances and he was a victim of circumstances. He got four sons and one daughter. He has to maintain his wife and family. The petitioner further submits that his conduct in jail is very good. He also availed parole and furlough leave from time to time and he has not misused the same. The petitioner, therefore, submits that since he has undergone actual sentence of 16 years including remission he is entitled to be released from jail under "fourteen years" rule. In this regard it is submitted that in case of one Shivaji Chougule and Ramdas Patil who were sentenced to death but subsequently given life imprisonment were released after fourteen years under the Prisoners Manual and the Circular dated 16-11-1978. It is thus submitted that the Circular issued on 11-5-1992 u/s 433A of the Code of Criminal Procedure applies to the facts of the case of the petitioner and he is entitled to be released from jail as he has completed more than 14 years. The petitioner, therefore, seeks Writ or direction in the nature of Writ of Mandamus requiring the respondents to release him from jail on such terms and conditions as this Court may deem fit and proper in the facts and circumstances of the case.

4. The Respondent State filed the reply and in the reply it is submitted that as per the guidelines, after completion of fourteen Years imprisonment report was made by the respondent No. 2 for premature release of the petitioner to the respondent No. 1 on 19-11-1994. Till 30-11-1996 the petitioner has undergone imprisonment of more than 14 years, that is to say 14 years 8 months and 10 days. He has received remission and said remission is of 10 years 11 months as on 30-11-1996 and his undertrial period is 9 months and 9 days. Thus the total period comes to 26 years 4 months and 419 days. It is, however, stated that the Government considered the report and by its order dated 13-8-1996 directed the release of the petitioner on completion of 30 years imprisonment including all remissions. Therefore, since the petitioner has not completed 30 years of imprisonment including all remissions as per category No. 7(a) of the guidelines annexed to the petition at Exhibit D, the petitioner is not entitled to be released. The petition of the petitioner is, therefore, devoid of any merit and deserves to be dismissed.

5. We have heard Mr. Dhorde and Mr. Dighe, learned counsel for the petitioner and Mr. K. B. Choudhary, learned Additional Public Prosecutor for the State. The provisions of sections 432 and 433A of the Code of Criminal Procedure came up for consideration by the Supreme Court in number of cases. It is not in dispute that category No. 7(a) of the guidelines issued for premature release under "fourteen years" rule applies to the prisoners whose death sentence is reduced to life imprisonment. Category No. 7(a) reads as under:

Categorisation of crime Period of imprisonment to be undergone including remissions subject to a minimum of 14 years of actual imprisonment including set-off period.

7. Death Sentence commuted to life 30 years imprisonment.

There is no dispute that these guidelines are issued in view of the amendment to the Code of Criminal Procedure and the introduction of section 433A of the Code of Criminal Procedure (Amendment) Act, 1978, imposing restriction on the powers of the appropriate Government to remit sentences of the prisoners convicted after 18-12-1978. That means the guidelines issued by the letter dated 16-11-1978 to which reference is made by the petitioner in the writ petition have no application. Therefore, in the revised guidelines which are in consonance with section 433A of the Code of Criminal Procedure, the period of imprisonment to be undergone by the petitioner is 30 years including remission. There is also no dispute that if the period of 30 years is to be taken into account the petitioner's request for premature release is premature.

6. Mr. Dighe, learned Counsel for the petitioner, however, invited our attention to the decision in the case of *Y. Dass and Another Vs. State*, . The learned Single Judge of the Karnataka High Court while considering the impact of the provisions of sections 432, 433 and 433A of the Code of Criminal Procedure, held that in a case governed by section 433A if the convict had not completed his detention for full 14 years, he would not be entitled to claim any direction to the State for premature release on the basis of preconviction detention or remissions earned by him. We fail to understand how this decision will be applicable to the facts of the present case. Nevertheless, it is evident from that decision on which reliance is placed by the learned Counsel for the petitioner that in the case of *Maru Ram and Others Vs. Union of India (UOI) and Others*, the Supreme Court observed that:

".....even if remissions are given full faith and credit, the date of release may not come to pass unless all the unexpired and uncertain balance is remitted by a government order u/s 432. If this is not done, the prisoner will continue in custody. We assume here that the constitutional power is kept sheathed."

7. In the present case admittedly the respondent No. 1 by its order dated 13-8-1996 clearly stated that the Government has decided that the prisoner No. C-7071 should be released on completion of 30 years of imprisonment including all remissions subject to his good behaviour and conduct upto the aforesaid time of his release. This order passed by the State Government, in our opinion, is fully in conformity with the provisions contained in section 433A of the Code of Criminal Procedure read with the revised guidelines issued on 11-5-1992.

8. Before closing, we, however, want to mention that the petitioner was convicted for murder of 5 persons by use of gun. The genesis of the occurrence and the manner in which five deaths occurred would undoubtedly show that the case of the petitioner necessarily falls under category No. 7(a) of the Guidelines.

9. In this context the ratio laid down by the Supreme Court and more particularly referred to in the case of *Ashok Kumar alias Golu Vs. Union of India and others*, , is that where a person has been sentenced to imprisonment for life the

remissions earned by him during his internment in prison under the relevant remission rules have a limited scope and must be confined to the scope and ambit of the said rules and do not acquire significance until the sentence is remitted u/s 432, in which case the remission would be subject to limitation of section 433A of the Code, or the constitutional power has been exercised under Articles 72/161 of the Constitution of India. The State Government has exercised that power and in such a case we decline to interfere with the impugned order.

10. In the result, the writ petition fails and it is dismissed. Rule is discharged.